

¹ Under the Board's *Rules of Procedure*, an appeal must be filed within 180 days from the date of issuance of an OWCP decision. An appeal is considered filed upon receipt by the Clerk of the Appellate Boards. See 20 C.F.R. § 501.3(e)-(f). One hundred and eighty days from February 5, 2020, the date of OWCP's last decision, was August 3, 2020. Because using September 9, 2021, the date the appeal was received by the Clerk of the Appellate Boards, would result in the loss of appeal rights, the date of the postmark is considered the date of filing. The date of the U.S. Postal Service postmark is May 15, 2020, rendering the appeal timely filed. See 20 C.F.R. § 501.3(f)(1).

(OWCP).² Pursuant to the Federal Employee's Compensation Act³ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant has met his burden of proof to establish a diagnosed medical condition causally related to the accepted August 28, 2019 employment incident; and (2) whether OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On September 2, 2019 appellant, then a 54-year-old police officer, filed a traumatic injury claim (Form CA-1) alleging on August 28, 2019 he injured his lower back and was exposed to blood when escorting and controlling a patient while in the performance of duty. He stopped work on August 30, 2019. On the reverse of the claim form, appellant's supervisor acknowledged that appellant was in the performance of duty.

On August 30, 2019 Melanie Kawalok, a family nurse practitioner, opined that appellant was partially disabled from work and recommended light duty with lifting restrictions.

In a development letter dated September 18, 2019, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of additional factual and medical evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence. Appellant did not respond.

By decision dated October 21, 2019, OWCP accepted that the August 18, 2019 incident occurred as alleged, but denied appellant's traumatic injury claim, finding that he had not submitted evidence containing a medical diagnosis in connection with the injury. Consequently, it found that he had not met the requirements to establish an injury as defined by FECA.

On November 8, 2019 appellant requested reconsideration of the October 21, 2019 decision. He provided the completed September 18, 2019 development questionnaire and asserted that he did not initially experience low back pain and was more concerned about the blood exposure that had occurred on the date of injury. Appellant noted that he first sought medical treatment on September 9, 2019.

Appellant resubmitted the August 30, 2019 note from Ms. Kawalok and provided an additional September 7, 2019 note that she completed. On September 11, 2019 Sean Schoonover,

² The Board notes that, following the April 29, 2020 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

³ 5 U.S.C. § 8101 *et seq.*

a physician assistant, completed a form report and a work release note. He also completed form reports on November 7, 2019.

On February 5, 2020 OWCP denied modification of its October 21, 2019 decision.

OWCP continued to receive evidence. Appellant submitted September 25 and October 28, 2019 notes from Mr. Schoonover who noted that he presented with continued complaints of low back pain. He also resubmitted copies of Mr. Schoonover's September 11 and November 7, 2019 notes.

On April 3, 2020 appellant requested reconsideration of OWCP's February 5, 2020 decision.

By decision dated April 29, 2020, OWCP denied reconsideration of the merits of appellant's claim.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA⁴ has the burden of proof to establish the essential elements of his or her claim, including that the individual is an employee of the United States within the meaning FECA, that the claim was timely filed within the applicable time limitation period of FECA,⁵ that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁶ These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁷

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. The first component is that the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged. The second component is whether the employment incident caused a personal injury and can be established only by medical evidence.⁸

⁴ *Id.*

⁵ *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁷ *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁸ *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.⁹ The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and specific employment factors identified by the employee.¹⁰

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met his burden of proof to establish a medical condition causally related to the accepted August 28, 2019 employment incident.

In support of his claim, appellant submitted an August 30, 2019 note from Ms. Kawalok, a family nurse practitioner, as well as September 11 and November 7, 2019 notes from Mr. Schoonover, a physician assistant. The Board has long held that certain healthcare providers such as physician assistants and nurse practitioners are not considered qualified physicians as defined under FECA.¹¹ Their medical findings, reports and/or opinions, unless cosigned by a qualified physician, will not suffice for purposes of establishing entitlement to FECA benefits.¹² Consequently, the notes from Ms. Kawalok and Mr. Schoonover are insufficient to meet his burden of proof.¹³

As the evidence of record is insufficient to establish a diagnosed medical condition causally related to the accepted August 28, 2019 employment incident, the Board finds that appellant has not met his burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

⁹ *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

¹⁰ *O.P.*, Docket No. 19-0445 (issued July 24, 2019); *L.H.*, Docket No. 18-1217 (issued May 3, 2019); *S.C.*, Docket No. 16-0293 (issued May 10, 2016); *A.C.*, Docket No. 08-1453 (issued November 18, 2008) (as there was no medical evidence diagnosing an emotional condition, appellant failed to establish a *prima facie* claim).

¹¹ Section 8102(2) of FECA provides as follows: “(2) physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law.” 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); see also *E.W.*, Docket No. 20-0338 (issued October 9, 2020).

¹² *Id.*; *K.A.*, Docket No. 18-0999 (issued October 4, 2019); *K.W.*, 59 ECAB 271, 279 (2007).

¹³ *S.E.*, Docket No. 21-0666 (issued December 28, 2021).

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation. The Secretary of Labor may review an award for or against compensation at any time on his own motion or on application.¹⁴

To require OWCP to reopen a case for merit review, pursuant to FECA, the claimant must provide evidence or an argument which: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.¹⁵

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.¹⁶ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.¹⁷ If the request is timely, but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.¹⁸

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

Appellant's timely request for reconsideration on November 8, 2019 neither alleged nor demonstrated that OWCP erroneously applied or interpreted a specific point of law. Additionally, the Board finds that he did not advance a relevant legal argument not previously considered by OWCP. Consequently, appellant is not entitled to further review of the merits of his claim based on either the first or second above-noted requirements under 20 C.F.R. § 10.606(b)(3).

The Board further finds that appellant did not submit relevant and pertinent new evidence not previously considered by OWCP. OWCP previously denied his claim because there was no medical evidence of record establishing a diagnosed medical condition causally related to the accepted August 28, 2019 employment incident. In support of his reconsideration request,

¹⁴ 5 U.S.C. § 8128(a); *see L.D.*, Docket No. 18-1468 (issued February 11, 2019); *see also V.P.*, Docket No. 17-1287 (issued October 10, 2017); *D.L.*, Docket No. 09-1549 (issued February 23, 2010); *W.C.*, 59 ECAB 372 (2008).

¹⁵ 20 C.F.R. § 10.606(b)(3); *see L.D.*, *id.*; *see also L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

¹⁶ *Id.* at § 10.607(a). The one-year period begins on the next day after the date of the original contested decision. For merit decisions issued on or after August 29, 2011, a request for reconsideration must be received by OWCP within one year of the merit decision for which review is sought. *Supra* note 11 at Chapter 2.1602.4 (February 2016). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the received date in the Integrated Federal Employees' Compensation System (iFECS). *Id.* at Chapter 2.1602.4b.

¹⁷ *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

¹⁸ *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

appellant submitted September 25 and October 28, 2019 notes from Mr. Schoonover. The Board finds that submission of these notes did not require reopening appellant's case for merit review because they have no probative value on the underlying issue on reconsideration. These reports do not constitute competent medical evidence because physician assistants are not considered physicians as defined under FECA.¹⁹ Therefore, this evidence is not relevant and is insufficient to require a merit review.²⁰

The Board, accordingly, finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.²¹

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a diagnosed medical condition causally related to the accepted August 28, 2019 employment incident. The Board further finds that OWCP properly denied his request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

¹⁹ *Supra* note 11.

²⁰ *Id.*; *see R.G.*, Docket No. 19-1889 (issued April 14, 2021).

²¹ *R.G., id.*; *D.G.*, Docket No. 19-1348 (issued December 2, 2019).

ORDER

IT IS HEREBY ORDERED THAT the February 5 and April 29, 2020 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: March 7, 2022
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board